

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

THELL G. PRUEITT,	§	
Plaintiff,	§	
V.	§	
	§	
HSBC BANK USA, NATIONAL	§	A-15-CV-00002-LY-ML
ASSOCIATION, AS TRUSTEE, ON	§	
BEHALF OF ACE SECURITIES CORP.,	§	
HOME EQUITY LOAN TRUST, SERIES	§	
2005-HE4, ASSET BACKED PASS-	§	
THROUGH CERTIFICATES, AND	§	
SELECT PORTFOLIO SERVICES, INC.,	§	
Defendants.	§	
	§	

ORDER

Before the Magistrate Court is Plaintiff, Thell G. Prueitt's Response to Defendant Request for Summary Judgment, which was sent directly to the the chambers of District Judge Lee Yeakel by regular mail and certified mail on September 12, 2014. Prueitt has also mailed a Certificate of Service to Judge Yeakel's courtroom deputy, indicating that Prueitt has served a copy of his response to attorney Joel Thompson, who has entered an appearance on behalf of Defendants in this case.¹

Federal Rule of Civil Procedure 5(d)(2)(B) allows a party to file by delivering a motion or response to "a judge who agrees to accept it for filing, and who must then note the filing date on the paper and then promptly send it to the clerk." In this court, however, the judges have not agreed to accept papers for filing; Local Rule CV-5(a)(2) instructs litigants wishing to file

¹ All nondispositive motions in the above-styled cause have been referred to the undersigned by United States District Judge, Lee Yeakel, for resolution pursuant to 28 U.S.C. § 636(b)(1)(A), Federal Rule of Civil Procedure 72, and Rule 1(c) of Appendix C of the Local Rules of the United States District Court for the Western District of Texas.

through traditional (i.e., non-electronic) means to furnish two copies of the document *to the clerk*. The clerk will then file one copy and send the other to the judge internally. *Id.*

The Magistrate Court recognizes that Plaintiff is acting *pro se*, and therefore lenience is required. Such lenience, however, does not extend to allowing Plaintiff to disregard the Federal or Local Rules applicable to all litigants. In the interest of maintaining a full and complete record of the proceedings in this case, the Magistrate Court will instruct the clerk's office to file the Response and Certificate of Service mailed to the District Court by the Plaintiff. This method of "filing," however, is disfavored ***and any further pleadings mailed to the District Judge or the Magistrate Judge instead of the clerk's office will not be accepted for filing.***

Plaintiff is instructed to consult the Federal Rules of Civil Procedure and the Local Rules, both of which are available on the website maintained by the United States District Courts for the Western District of Texas (<http://www.txwd.uscourts.gov>) under the "Court Info" tab, which contains a link to "Appellate, Federal, and Local Court Rules." All future filings in this case must comply with the Federal and Local Rules with regard to time of filing, method of filing, and method of service on opposing counsel.

With regard to the summary judgment "Response" Plaintiff has attempted to file, the Magistrate Court notes Plaintiff appears to be relying on the Scheduling Order in this case as providing a date certain before which a motion for summary judgment cannot be filed. Plaintiff has not alleged that more discovery is needed in this case or that a delay is needed to allow him to marshal his arguments; he simply contends that the Defendants are attempting to "circumvent" the scheduling order by filing a motion for summary judgment before the deadline contained therein. In the interest of fairness and in light of the federal courts' longstanding preference for resolving suits on their merits, this Court instructs Plaintiff that the scheduling order governing

this case provides deadlines by which certain filings must be completed, and there is nothing in the scheduling order that prevents Defendants from acting on *or before* the specified deadlines. Plaintiff is not entitled to a hearing or mediation before adjudication of the merits of the summary judgment motion; the court may decide the motion on the basis of the briefing and the supporting documentary evidence presented. It is Plaintiff's burden to present evidence raising a material fact issue in response to the motion for summary judgment, within the time limits imposed by Local Rule CV-7. Because Plaintiff is proceeding without the benefit of counsel and appears to have neglected to familiarize himself with the applicable Federal and Local Rules, the Magistrate Court will allow Plaintiff fourteen days from the entry of this Order to file an Amended Response to Defendants' Motion for Summary Judgment that complies with the procedural and substantive rules concerning summary judgment set forth in the Federal Rules of Civil Procedure and the Local Rules for the Western District of Texas. Defendants shall have seven days from the filing of Plaintiff's Amended Response to file a reply brief.²

In accordance with the foregoing,

IT IS ORDERED that the Clerk of this Court shall file the Response to Defendant Request for Summary Judgment and the Certificate of Service, attached hereto as Exhibits A and B, as part of the official court record in this case.

² The Magistrate Court recognizes that Defendants filed a Reply to Plaintiff's improperly filed (but properly served) Response today, September 17, 2015, asserting they are entitled to summary judgment based on Plaintiff's failure to present evidence in response to their Motion. *See* Dkt. #11, filed September 17, 2015. The Court notes, however, that a reply brief is optional under Local Rule CV-7, and neither Plaintiff's deadline to respond nor Defendants' deadline to make any reply has yet expired under Local Rule CV-7. Therefore, the Court finds Defendants are not prejudiced by this Order granting Plaintiff a fourteen day extension to prepare a substantive response to their motion for summary judgment, and granting Defendants seven days to prepare a reply that addresses Plaintiff's Amended Response.

IT IS FURTHER ORDERED that Plaintiff shall consult the Federal Rules of Civil Procedure and this Court's Local Rules for the Western District of Texas and file an Amended Response to Defendants' Motion for Summary Judgment on or before **October 2, 2015**.

IT IS FINALLY ORDERED that Defendants shall have seven days from the filing of Plaintiff's Amended Response to file a Reply brief, if desired.

SIGNED September 17, 2015



MARK LANE
UNITED STATES MAGISTRATE JUDGE